In this Chapter...

This chapter explores strategies for creating a safe courthouse environment and for gathering information in cases where domestic violence is present. It also addresses confidentiality concerns.

2.1 Introduction: Why Is It Important to Know Whether Domestic Violence Is Present in a Case?

No court can adequately respond to domestic violence of which it is unaware. In order to make just, workable decisions in domestic relations cases, judges and referees rely on Friend of the Court caseworkers, conciliators, and investigators to provide information and make recommendations concerning the parties and their circumstances. To carry out their duties, these court staff members must gather information about various physical and mental health issues that may be present in the family relationships before the court, including domestic violence. There are many reasons why it is important that the presence of domestic violence be identified as soon as possible after a domestic relations case is filed.

F Domestic violence, regardless of whether directed against or witnessed by a child, is a factor that the court must consider in determining the "best interest" of a child under the Child Custody Act, MCL 722.23(k); MSA 25.312(3)(k).

- "The reasonable likelihood of abuse of a parent resulting from the exercise of parenting time" is a factor for the court to consider in determining the frequency, duration, and type of parenting time to be granted under MCL 722.27a(6)(d); MSA 25.312(7a)(6)(d).
- Under the federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, courts must cooperate with federal and state child support agencies to safeguard against the disclosure of confidential information about persons subjected to domestic abuse. See, e.g., MCR 3.218(A)(3)(g) and 42 USC 654(26)(B)–(C).
- Identifying domestic violence early in a case allows for taking precautions to promote the safety of the parties, their children, and court personnel. For this reason, inquiry into the presence of domestic violence should also include inquiry into the presence of any "lethality factors," discussed in Section 1.5(B).
- Identifying domestic violence early in a case allows for a complete investigation about the parties' circumstances, providing a sound factual basis for judges and referees who must issue orders governing the parties' interactions as the case progresses through the court system.

In many cases, the presence of domestic violence is disclosed to the court by a party to the domestic relations case or his or her attorney. However, many persons who are subject to domestic abuse do not tell the domestic relations court about the violence in their lives, or they do so only after the case is well underway. Fear, uncertainty, embarrassment, denial, and lack of resources may be obstacles to abused individuals as they contemplate whether to disclose information about domestic violence to a court:

*See Section 1.6 on abusive tactics.

- An abused individual may fear retaliation from the abuser if the violence is revealed. Retaliation may take many forms — physical violence, institution of a protracted custody battle, or reports of child abuse or neglect to the state Protective Services agency are common tactics used by domestic violence perpetrators in domestic relations cases.*

*See Sections 1.3 and 1.7(A) on why abused individuals may return to an abuser.

- An abused individual may fear that the court will not believe the allegations of domestic violence. This fear can be a factor in many different situations, but it is often present in situations where the abused individual has delayed making a disclosure until the domestic relations case is already well underway. It may also arise where the parties have separated and reconciled on previous occasions.*
- Abused individuals may be uncertain about the consequences of disclosure to the court. They may fear that the court will disclose reports of domestic violence to the abuser, or that the report will result in the court or Protective Services removing children from their care.

Such fears may be based upon misinformation given by the abusive party, or on past experience with the court or other state agencies.

- The abused party may be too embarrassed about the abuse to disclose it, or may be unable to recognize it as "domestic violence" that has significance for the outcomes in the case. Minimization or denial of violence is one way that some individuals cope with it; this response may help such individuals to survive the emotional trauma suffered.*

*Douglas, *The Battered Woman Syndrome*, in Domestic Violence on Trial, p 43 (Sonkin, ed, Springer, 1987). See also Section 1.7(A).

- Counsel for the abused party may advise the party not to disclose the abuse as a strategy in the case.
- The court may lack the financial or physical resources necessary to fully investigate the circumstances of the case.
- Court personnel may be unable to fully investigate the circumstances of the case. Many court employees have heavy case loads, with no time to ask many questions about the parties' circumstances in each case.

Court personnel are most likely to be successful at overcoming the above obstacles if the environment at the court provides physical safety and other support for disclosure of domestic violence at all stages of the proceedings. The rest of this chapter will explore some of the key components of a safe courthouse environment, namely:

- Court personnel who are well informed about domestic violence and community referral resources.
- Clear, ongoing communication with the parties about court procedures, especially those regarding confidentiality of information.
- Ongoing efforts to minimize contact between the parties to relationships where domestic violence is present.
- Use of effective information-gathering techniques and consistent procedures for identifying cases where domestic violence is present.
- Consistent procedures for safeguarding confidential information in cases where domestic violence is present.

2.2 Informing Court Personnel

Few personnel in Friend of the Court offices are experts on domestic violence, just as few staff members are experts in other health problems that affect the family, such as mental illness or substance abuse. As is the case with other serious family health problems, intervention with domestic violence requires referral to professionals with expertise that is beyond the purview of most Friend of the Court staff members.* Nonetheless, domestic violence is a factor to consider in making custody and parenting time decisions under the

*For more information about referral agencies, see Chapter 3.

Child Custody Act. Accordingly, Friend of the Court personnel will be better able to perform their duties if they have basic information about the nature of domestic violence. Such information will assist Friend of the Court staff in assessing the sincerity of allegations of violence. More importantly, informed court personnel will be more aware of the potential dangers surrounding access to children and support in cases involving domestic violence.

Domestic violence information provided for court personnel should include the following components:

- Nature and dynamics of domestic violence, focusing on tactics that abusers use to control their victims, and on common indicators of the potential for lethal violence.
- Effects of domestic violence on children, especially for workers who are concerned with custody and parenting time matters.
- Court policies for identifying domestic violence at various stages of the proceedings.
- Court policies on confidential information.
- Safety measures to be taken when processing cases where violence is present, including parenting time provisions that promote safety.
- Statewide and local domestic violence resources, including domestic violence service agencies, shelters, and batterer intervention service provider programs. The roles that these resource agencies play in the response to domestic violence should be clearly explained.

*Contact information for the MDVPTB, the MCADSV, and the Resource Center is found in Section 3.1.

Court personnel can get information about domestic violence through a number of different sources. Besides the Michigan Judicial Institute's seminars and publications, courts can also turn to local domestic violence service agencies, who often engage staff or knowledgeable volunteers to provide information about domestic violence to community agencies. Some Michigan courts have undertaken joint training initiatives involving both Friend of the Court and service agency personnel. The Michigan Domestic Violence Prevention and Treatment Board ("MDVPTB") Training Institute can also provide assistance in arranging for qualified persons to conduct local training sessions on domestic violence. The Michigan Coalition Against Domestic and Sexual Violence ("MCADSV") is likewise engaged in domestic violence training activities. The MDVPTB and MCADSV collaboratively offer a Resource Center on Domestic and Sexual Violence with an extensive collection of publications, brochures, and videotapes on domestic violence topics.*

2.3 Communicating with the Parties

Concern about the court's response to domestic violence may be fueled by an abuser's threats of retaliatory litigation, by misinformation about court

processes, or by lack of access to legal counsel. Abusers often control their partners' access to community resources; with respect to court proceedings, they may deliberately provide misinformation or prevent a partner from receiving notices sent from the court. Abusers often control the finances in a household, so that their partners will not have access to the funds to pay for legal counsel in domestic relations proceedings. In one case reported by a domestic violence advocate, an abuser deliberately retained all of the domestic relations attorneys in the family's community so that his wife would not have access to them.

To overcome the fear and uncertainty that many abused individuals experience when dealing with the court system, courts can provide the parties with clear, consistent, ongoing information about court practices and procedures. Such information may make abused individuals feel safer about disclosing domestic violence. Information is also vital to their safety; in fact, safety planning is only possible if an abused individual understands the nature and timing of the court's actions.

To effectively communicate with the parties in cases involving domestic violence, a court might take the following steps:

- From the earliest stages of the case, the parties need to understand what information the court may and may not keep confidential. If a party wishes non-confidential information, such as an address, to remain confidential, it is important to provide information as to how that might be accomplished, i.e., by a court order.*

*More information about the rules governing confidentiality in domestic relations proceedings is found at Section 2.13.

- Provide complete information about court proceedings, including information about the timing and duration of the proceedings.

- Explain fully the factors the court will consider in making its decisions about support, child custody, or parenting time.

- Communicate to both parties that the court takes allegations of domestic violence seriously. One way to communicate this is to consistently hold abusive parties accountable for abusive tactics, e.g., by making them bear the costs of counseling, retaliatory or frivolous litigation, or supervised visitation. See, e.g., MCL 600.658(3), 600.665(2); MSA 27A.658(3), 27A.665(2), authorizing assessment of interstate travel expenses against a party who engages in "reprehensible conduct" or who violates another state's custody order and so makes it necessary to enforce the order in Michigan.*

*For more on interstate proceedings, see Lovik, Domestic Violence: A Guide to Civil & Criminal Proceedings, Section 13.8 (MJI, 1998).

- Inquire about the circumstances where a party does not appear for a scheduled court proceeding.

- Provide information about community service provider agencies or pro bono legal service agencies.

- Provide educational materials on the nature and dynamics of domestic violence. Such information may help individuals overcome their

embarrassment about domestic violence, or may aid those who suffer abuse, but do not recognize that domestic violence is a factor in their lives. Educational materials may be made available at various locations in the courthouse, or in orientation packets or programs provided for litigants or their children.

- In providing information, consider cultural concerns, literacy, and language barriers.*

*See Section 3.5 on cross-cultural communication.

- Courts might consider using electronic media (such as the Internet) to convey information about proceedings. Appropriate warnings should be provided about the limitations on confidential access to such information.

It is important to understand that measures like those described above may not completely alleviate an individual's fear or uncertainty about the court's response to domestic violence. Domestic violence is a factor the court must consider in determining the best interests of the child and in setting terms for parenting time under the Child Custody Act. See MCL 722.23(k), 722.27a(6d); MSA 25.312(3)(k), 25.312(7a)(6)(d). Thus, if allegations of domestic violence surface, they must be fully and fairly investigated in accordance with due process principles. There may be great tension between the abused party's need for safety and the court's duty to provide due process to both parties. In some cases, the court's efforts to create a safe environment may diminish a party's fears about safety. In other cases, however, a party may remain uncertain about disclosing information about domestic violence because he or she fears the loss of access to children. In light of the court's duty to consider the best interests of the children, this apprehension may be justified.

Domestic violence is only one of several factors the court must consider in determining the best interests of the children.* The abused party may be concerned about other factors, including:

*More discussion of the statutory best interest factors appears in Chapter 4.

- The willingness and ability to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent. MCL 722.23(j); MSA 25.312(3)(j). Some abused individuals fear that they will appear to be uncooperative or "unfriendly" if they raise the issue of domestic violence. This fear will be particularly significant for abused individuals who fear that the court will not believe the allegations of abuse.

- The capacity to provide for the child's physical and emotional needs. MCL 722.23(b), (c), (g); MSA 25.312(3)(b), (c) (g). In some cases, domestic violence may have seriously impaired a party's ability to function as a parent. In other cases, the perpetrator may be a new partner who is not a parent to the children involved in a child custody or parenting time proceeding.

Courts will not change their obligation to provide due process to all parties to litigation; neither will they change the fact that custody and parenting time determinations must be made with the best interests of the children in mind. In some cases, the most helpful thing the court might do is to provide a referral to a domestic violence service agency that can provide safety planning and advocacy services. These agencies may be able to empower abused persons so that they are better able to function as parents or to extricate themselves from relationships with violent partners.

2.4 Minimizing Contact Between the Parties

Threats of physical violence may be a reason why abused individuals maintain secrecy in some relationships. Moreover, opportunities for continued domestic abuse may arise during court proceedings that require the presence of both parties. Courts can address these concerns by taking steps to minimize the contact between the parties:

- Where abuse is alleged or suspected, separate the parties and conduct individual interviews. At the separate interview, ask the party who may be abused if he or she feels safe participating in the proceedings with the other party. At this interview, determine what arrangements would make the party feel safe (e.g., separate interviews at all times, phone conferences, support or security person present at proceedings).
- When calling on the phone, ask if the person can safely talk, or arrange for a code word to indicate that the person is not safe.
- Arrange for staggered meeting times. Provide escorts to transportation after meetings.
- Honor any no-contact provisions in court orders, such as personal protection orders, probation orders, or conditional release orders issued in criminal proceedings.*
- Arrange for separate waiting areas in the courthouse.
- Allow abused individuals to leave the courthouse first, and keep abusers in the courthouse until the abused individual has had the opportunity to leave without being followed.

*More information about PPOs and criminal court orders is found in Chapters 7 and 8.

In interstate cases, statutory provisions exist that decrease the risk of violence by permitting the taking of evidence while the parties are separated. The Uniform Child Custody Jurisdiction Act, MCL 600.651 et seq; MSA 27A.651 et seq contains the following procedures for gathering evidence from another state:

- In addition to other procedural devices available to a party, testimony of witnesses may be adduced by deposition or otherwise in another state. MCL 600.668; MSA 27A.668.

- One court may request another to assist with evidence-gathering in a variety of ways: holding hearings to adduce evidence; ordering a party to produce or give evidence; and, having social studies made regarding the custody of a child. The assisting court may then forward certified copies of hearing transcripts, evidence, or social studies prepared in compliance with the request. MCL 600.669(1)–600.670(1); MSA 27A.669(1)–27A.670(1).

Similar provisions appear in the Uniform Interstate Family Support Act, which provides that a petitioner's presence in Michigan is not required for the establishment, enforcement, or modification of a support order or for the rendering of a judgment determining parentage. MCL 552.1328(1); MSA 25.223(328)(1). See Section 5.3(D) for more information on the evidence-gathering provisions of this Act.

2.5 Effective Information-Gathering Practices

A court will be better able to identify domestic violence in the cases before it by developing local practices for case processing that take the potential for violence into account at various stages of the proceedings. Such practices will assist courts to consistently make the factual determinations required by state and federal law. Well-developed local practices will also provide direction to court personnel who must interact with the parties to a relationship where domestic violence is present, so that the parties' contact with the court takes place as safely as possible.

Local practices for identifying domestic violence might address such topics as:

- Points in the proceedings when the parties will be given a specific opportunity to talk about violence in their relationship. These opportunities are most likely to be effective if they involve individual contact with court staff. The court may have to work with its local funding unit to develop the personnel resources needed to provide such opportunities.
- Personnel who will be responsible for gathering information about domestic violence at various stages of the proceedings.
- Techniques for gathering information at various stages of the proceedings.

Sections 2.6–2.12 address various information-gathering techniques that courts and other agencies have used to identify whether domestic violence is present in a case.

2.6 Using Written Form Questionnaires

Written form questionnaires are used in some courts at various stages of domestic relations actions.

- Some courts request the parties to complete a questionnaire at the case intake stage. See, e.g., FOC 39A–39D, prepared by the State Court Administrative Office. These forms typically solicit information about the parties' vital statistics, financial situation, and health insurance.

- Some courts also use questionnaires to screen cases prior to mediation. These questionnaires are more likely to address the substantive questions at issue in the case, which may include domestic violence.*

*See Chapter 6 on mediation.

While written form questionnaires may be useful tools to assist in identifying the presence of domestic violence in a case, they are subject to certain limitations. A recent study of questionnaires used by social service agencies in TANF cases concluded that abused individuals may not be likely to disclose domestic violence on a form containing extensive questions about the details of their experiences. This study concluded that the most effective questionnaires contained brief, unintrusive questions that focused on the respondents' ability to take part in the administrative proceedings with which they were involved.* Thus, the Advisory Committee for this Resource Book suggests that written questionnaires in domestic relations cases be brief and unintrusive, focusing on a party's ability to participate in the court proceedings attendant to the case. Questions of this nature might include:

*Raphael & Haennicke, *Keeping Battered Women Safe Through the Welfare-to-Work Journey: How Are We Doing?* p 12–13 (Taylor Institute, Sept, 1999).

- Do you feel safe participating in (conciliation, mediation, pretrial conferences, court hearings) at which the other party is present? In the event that a litigant answers "no" to this question, a court staff member might follow up by interviewing the party to determine what steps might be taken so that the party does feel safe with participating in court proceedings.

- Is it safe for the other party to know your address? If the answer to this question is "no," a personal follow-up interview might be appropriate to inform the party of the steps that need to be taken to request a court order protecting the address.*

*See Section 2.13 for more discussion of confidentiality.

Another issue to consider with written form questionnaires is that they may raise difficult questions regarding confidentiality. In some courts, written questionnaires are treated as work product that will not be disclosed to an opposing party or attorney for that party. However, in other courts, they are subject to inspection by the opposing party. MCR 3.218(B) governs confidentiality of Friend of the Court records, providing that "[a] party, third-party custodian, guardian, guardian ad litem or counsel for a minor, and an attorney of record must be given access to friend of the court records related to the case, *other than confidential information.*" [Emphasis added.] MCR 3.218(A)(3) defines "confidential information" to mean:

> "(a) staff notes from investigations, mediation sessions, and settlement conferences;
>
> "(b) [Family Independence Agency] protective service reports;
>
> "(c) formal mediation records;
>
> "(d) communications from minors;
>
> "(e) friend of the court grievances filed by the opposing party and the responses;
>
> "(f) a party's address or any other information if release is prohibited by a court order; and
>
> "(g) all information classified as confidential by the laws and regulations of title IV, part D of the Social Security Act, 42 USC 651 et seq"*

*Amendments to MCR 3.218 effective April 1, 2001 will add to this list privileged information and information provided by a governmental agency subject to a written condition of confidentiality. For more information on confidentiality requirements under the Social Security Act, see Section 2.14.

Under the foregoing court rule, information on form questionnaires is more likely to be confidential if it can be characterized as a "staff note," i.e., if it is written onto the form by a staff member as part of an investigation, mediation session, or settlement conference. A more complete discussion of MCR 3.218(A)(3) appears at Section 2.13(A).

> **Note:** MCL 552.507(4); MSA 25.176(7)(4) provides that "[a] copy of each report, recommendation, transcript, and any supporting documents *or a summary of supporting documents* prepared or used by the friend of the court or an employee of the office shall be made available to the attorney for each party and to each of the parties before the court takes any action on a recommendation made under [sections 5 or 7 of the Friend of the Court Act, MCL 552.505, 552.507; MSA 25.176(5), (7)]."* [Emphasis added.] Although this statute potentially requires the disclosure of information contained on written questionnaires, it permits Friend of the Court staff to summarize information rather than providing the original documents.

*These sections permit referees and Friend of the Court personnel to make reports and recommendations on custody, parenting time, or child support.

Where information is deemed confidential, the court should have consistent policies and procedures to protect it from inadvertent disclosure.

Confidentiality concerns about written questionnaires can be avoided by using them to solicit information about circumstances that are not likely to be confidential, such as prior court proceedings between the parties. Information about personal protection orders, other past or pending court proceedings, criminal pretrial release orders, and conditions of probation will generally not require confidential treatment, and may be vitally important to the domestic

relations court as it contemplates orders for support, custody, or parenting time. This line of questioning might include items such as the following:

- Are there now or have there ever been any criminal charges brought against either party (in Michigan or in any other state)? If so, in what court? What was the outcome?
- Has any other court (in Michigan or any other state) ever issued an order involving either party? If so what court? What did the order provide?
- Has either party ever been arrested? If so, when? Where? For what reason?
- Is there a personal protection order or other kind of protection order issued involving either party? If so, what court issued it (in Michigan or any other state)? What does it provide? Does it restrict access to your address or telephone number? When does it expire? Was the other party served with it?
- Has any other court (in Michigan or any other state) ever issued an order for custody, support or parenting time regarding any of the parties' children? If so, what court issued it? What did the order provide?
- Has any other court (in Michigan or any other state) issued an order that requires the other party to stay away from you? If so what court issued it? What does it provide? When does it expire?

Written questionnaires are more likely to produce useful information if they use language that is easily understood. A party will also be more likely to provide information about domestic abuse if he or she is provided with a safe, private place in which to complete a questionnaire, out of the presence of the other party.

2.7 Conducting Personal Interviews

Personal interviews with the parties may take place soon after a domestic relations case is filed in courts where a conciliation process is used to help the parties reach agreement regarding custody, parenting time, and support pending entry of the final judgment in the case. In other courts, personal interviews with the parties may occur in connection with the preparation of a custody or parenting time evaluation, an investigation, or a mediation proceeding. In all of these settings, court personnel may interview the parties together; doing so saves time for the court, and may encourage or teach the parties to reach a cooperative, workable solution to their disagreements. While these are laudable goals for non-violent relationships, researchers have concluded that cooperation is not a virtue that can coexist within the power and control dynamic of domestic violence:

> "Cooperation by a batterer with his wife/partner is an oxymoron. Cooperation, in common practice, means to act or work together for mutual benefit. A batterer is not someone who can cooperate. He understands mutual benefit as synonymous with his exclusive self-interest. His partner's interests must be subsumed in or subordinate to his own if they are to be recognized.... He coerces, intimidates, monitors, or threatens.... Batterers engage in a process of devaluing their wives, which enables them to dismiss her perspective and concerns....Batterers deny that they use coercive tactics, manipulation, and violence....Men who batter, from the moment they use violence or other coercive tactics of control and domination, have relinquished the option of cooperation." Hart, *Gentle Jeopardy: The Further Endangerment of Battered Women and Children in Custody Mediation,* 7 Mediation Quarterly 317, 320 (1990). [Citations omitted.]

Because domestic violence perpetrators desire to exert power and control over another individual, joint interviews may become opportunities for an abusive party to intimidate, manipulate, and control the abused individual. Indeed, an abuser's discovery that the abused individual has disclosed violence may place the abused individual in danger of serious physical injury or death. Accordingly, if violence is at issue or suspected in a case, it is important for court personnel who conduct personal interviews to separate the parties for individual sessions and to take safety precautions during these sessions. Safety precautions might include:

- **F** Scheduling interviews at staggered times.
- **F** Scheduling interviews on separate dates.
- **F** Scheduling telephone interviews.
- **F** Providing an escort to transportation for the abused individual after the interview.
- **F** Conducting separate interviews in different rooms at the same time ("shuttle" sessions).
- **F** Having extra security available during an interview.
- **F** Taking care during telephone conversations or correspondence with the parties that the location of the abused party is not revealed to the abuser.
- **F** Making sure that personnel who interview the parties have adequate training about domestic violence and knowledge of community resources that provide specialized services to both parties.

F If the person interviewed does not speak English, do not allow a friend or family member to act as interpreter.* The abused individual may not discuss domestic violence when these persons are present for fear that they may disclose the conversation to the abuser or for fear that the information presented may endanger the interpreter. In some cases, the interpreter might not want the violence to be disclosed, and may not accurately convey the abused individual's statements to the interviewer.

*See Section 3.5 on cross-cultural communication.

In addition to taking safety precautions during personal interviews, it is important that interviewers clearly explain the limitations of their role in the proceedings at the outset of the interview. Abused individuals can only make workable plans for their own safety if they are fully aware of how the information they disclose may be used. In most instances, the parties need to know that the interviewer's role is to determine the facts in the case and to make recommendations to the court. See MCL 552.505; MSA 25.176(5). The parties also need to understand that in giving reasons to support a recommendation, an interviewer will include information disclosed by a party during an interview.

Interviewers can also promote safety by clarifying at the outset of each interview the limitations on the confidentiality of the parties' communications during the interview. MCR 3.218 governs this question.* Staff notes from investigations, mediation sessions, and settlement conferences are examples of items that are not accessible to adverse parties. However, information gathered from a party in the course of preparing a custody, parenting time, or support evaluation is generally not confidential. See MCL 552.507(4); MSA 25.176(7)(4), and SCAO, *Michigan Parenting Time and Change of Domicile Evaluation Model*, p 49 (October, 1998); *Michigan Custody Evaluation Model*, p 7, 46 (October, 1998).

*This court rule is discussed in Section 2.13(A).

Note: In some cases, disclosure of domestic violence to the court may promote safety by increasing the abuser's accountability, especially if the court issues orders that impose consequences on the abuser for violent behavior. However, in other situations where disclosure to the court poses a risk that violence will escalate, an abused individual may benefit from a referral to a domestic violence service agency qualified to provide advocacy and other support services. In some jurisdictions, courts have arranged for staff from local domestic violence service agencies to come to the courthouse as needed to provide assistance to persons who are subject to abuse.

Interviewers should also recognize that the parties may not perceive themselves as victims or perpetrators of "domestic violence," either because they are minimizing or denying its existence as a response to trauma, or because they do not have enough information to characterize their experiences in this way. Accordingly, questions about the nature and extent of violence should address specific behavior patterns in the relationship, rather than asking about whether "domestic violence" or "domestic abuse" exists in the relationship.* The interviewer should keep in mind that domestic violence is a *pattern* of behavior that has as its goal the exercise of *power and control* over an intimate partner. Questions should be geared toward uncovering the dynamics of power and control in the relationship.

*Saunders, *Domestic Violence Perpetrators: Recent Research Findings & Their Implications for Child Welfare*, 3 Mich Child Welfare Law J 3 (Fall, 1999).

Finally, interview questions should be posed in a non-judgmental, non-threatening manner. Questions should be phrased in the investigator's own words, and introduced as routine, i.e., "Because abuse and violence are so common in intimate relationships, I routinely ask questions about it."

The following sample interview questions were adapted from materials supplied by the Midland County Office of the Friend of the Court.*

*The Advisory Committee for this Resource Book suggests that interviewers might also use questions such as these to screen for violence in new relationships that a party may have formed after a divorce or separation. For questions that might be posed in a mediation context, see Appendix E.

- **F** Please explain how decisions were made in your marriage.
- **F** Who made the financial decisions in your marriage? How were finances handled?
- **F** Has your spouse ever tried to control you through money?
- **F** Please describe how you act when you are angry.
- **F** Please describe how your spouse acts when he/she is angry.
- **F** Have you ever been afraid of your spouse?
- **F** Has your spouse ever been afraid of you?
- **F** Has your spouse ever physically harmed you? Please describe. (Were you slapped, punched, kicked, pushed, choked, bitten, smothered, hit with an object, shot at, stabbed?)
- **F** If your spouse has physically harmed you, did you have injuries that showed, like bruises or scrapes? Did you ever have broken bones or permanent injuries from something your spouse did to you?
- **F** Have you ever threatened your spouse? Has your spouse ever threatened you?
- **F** Have you or your spouse ever threatened or actually destroyed the other person's property?
- **F** Have you or your spouse ever intentionally harmed an animal or pet?
- **F** Have you been forced or coerced by your spouse to engage in sexual activity against your will?

- Have you or your spouse ever been violently or constantly jealous of the other?
- Have you or your spouse ever used or threatened to use a weapon to harm yourself or your spouse?
- Do you or your spouse own a weapon? Have either of you recently considered purchasing a weapon?
- Have you or your spouse ever contemplated or attempted suicide?
- Have any of your children been abused by an adult physically, sexually, or psychologically?
- Has your spouse harmed or threatened to harm your children?
- Have you ever called the police or 911 because of your spouse's behavior? (or, Has your spouse ever called the police or 911 because of your behavior?)
- If police have been called, is there a police report? Was there an arrest? If so, who was arrested? Were criminal charges filed?

2.8 Interviewing Children

Most children in homes with adult domestic violence are keenly aware of the violence.* If the children are old enough to talk about the violence and desire to do so, interviews with them are an important way to gather information. In some courts, children are given information about domestic violence during orientation sessions geared specifically for them, with staff on hand to talk about violence with them should they wish to do so.

*See Section 1.8 on domestic violence and children.

The following sample questions for children are taken from Ganley and Schechter, *Domestic Violence: A National Curriculum for Child Protective Services* (Family Violence Prevention Fund, 1996), adapted for Michigan use in Cain and McGee, *Domestic Violence: Michigan's Curriculum for Children's Protective Services* (Family Independence Agency, 1998).

- What happens when your parents fight? Does anyone yell, hit, shove, throw things, break things? Has anyone used a gun or knife?
- Has anyone threatened to hurt someone else? What did that person say?
- Do you ever have to take sides when your parents fight?
- Has anyone been hurt? Has anyone had to go to a doctor after a fight?
- Has any property been damaged?
- Is your parent afraid?

- How do your parents act after a bad fight?
- Have you seen the police or anyone else come over because of a fight?
- How do you feel during a fight? After a fight? Are you ever afraid when your parents fight?
- Have you ever been hurt by any of your parents' fights?
- What do your brothers and sisters do during a fight? What do you do?
- Have you tried to stop a fight?
- Have you ever called for help? Who would you call for help?
- Do you worry about your parents' fighting? Do you feel safe at home?
- Have you ever felt like hurting yourself or someone else?
- Do you talk to anyone about the fights?
- Are there guns in your house? Do you know where they are?

2.9 Reviewing Pleadings and Motion Papers

A review of the pleadings and motion papers filed in a domestic relations case may alert the court to the presence of violence in a case, but it is a time-consuming process that may not be feasible in courts with heavy caseloads. In these courts, a review of the pleadings and motion papers might be done in cases where there are other indicators that violence is at issue, such as a personal protection order issued against one of the parties, or a pending criminal matter.

2.10 Information from Criminal Cases Involving the Parties

*For a discussion of criminal court proceedings, see Chapter 8.

Because domestic violence often involves criminal behavior, criminal courts and law enforcement agencies may have information about prior or concurrent criminal proceedings involving the parties.* This section addresses the types of information that may be gathered from criminal proceedings.

> **Note:** Information about prior or concurrent criminal cases may or may not also be available from the parties to the domestic relations action. In many cases, a party will tell the court that the other party is facing (or has faced) criminal charges. There are many reasons why abused individuals might not disclose this type of information, however, including: unawareness that the criminal case is significant; embarrassment about their involvement with the criminal proceeding; or, fear of retribution from the abuser.

A. Pretrial Release and Probation Orders

Criminal court orders for conditional pretrial release and probation are a part of the public record accessible to Friend of the Court personnel.* See MCR 8.119(F)(5). Some Friend of the Court offices have computerized access to information about these types of orders from district courts and/or circuit court criminal divisions within their own counties. In counties without computerized access, telephone or electronic mail inquiries might be made. Obtaining information from counties outside a court's jurisdiction is more difficult because Friend of the Court personnel typically do not have access to centralized statewide information repositories, such as the LEIN system. However, if a suspected abusive party has recently lived in or moved to another county, a contact with the district or circuit court of that county may lead to information.

*For more on conditional release orders, see Section 8.7. Probation orders are discussed in Section 8.8.

When inquiring about conditional release or probation orders governing a party to a domestic relations case, it is particularly important to learn whether the party is subject to any **provision issued for the protection of a named individual.** Such provisions typically prohibit the defendant in a criminal case from having any contact with the victim of the crime or another named person or persons. They may also restrict the defendant from entering onto specified premises, or from beating, attacking, molesting, or wounding another person or persons. If the court is aware that a party to a domestic relations action is subject to restrictions on his or her interaction with another person, it is important that the domestic relations case proceed consistently with these restrictions. For example, a defendant ordered to stay away from an intimate partner by way of a criminal "no-contact" order should not be ordered to appear jointly with that partner during a domestic relations conciliation proceeding. Moreover, it is critical that orders issued in the domestic relations proceeding are consistent with any orders previously issued in a criminal proceeding whenever this is possible. Because inconsistent orders cannot be enforced by police, they endanger victims of abuse by giving abusers the opportunity to exercise their control tactics without intervention.

> **Note:** Although a court's probation order is a matter of public record, all records and reports or investigations made by a probation officer (including presentence investigation and alcohol assessment reports), and all case histories of probationers are privileged or confidential communications not open to public inspection. Moreover, a confidential relationship exists between a probation officer and a probationer or defendant under investigation. MCL 791.229; MSA 28.2299. See also MCL 771.14(5); MSA 28.1144(5) (the court shall permit the prosecutor, the defense attorney, and the defendant to review the presentence investigation report before sentencing), and *Michigan Trial Court Case File Management Standards*, Component 19 (State Court Administrative Office, Adopted November, 1999).

B. Information in the Records of Law Enforcement Officers and Prosecutors

1. Information on the Law Enforcement Information Network

Friend of the Court employees may *not* access information on the Law Enforcement Information Network for purposes of investigating custody or parenting time issues. The State Court Administrative Office's Trial Court Case File Management Standards make the following comment regarding the criminal court's dissemination of criminal history information:

> "Dissemination of criminal history information is subject to Michigan and Federal rules and regulations. Use of LEIN records is limited to the purpose of the inquiry. Dissemination or release of non-conviction data (such as arrest-only records) is prohibited, except to authorized criminal justice agencies. [LEIN Policy Council Administrative Rules and Title 28, USC 20]." *Michigan Trial Court Case File Management Standards*, Component 19 (State Court Administrative Office, Adopted November, 1999).

See also MCL 28.214(1) and (3); MSA 4.448(54)(1) and (3), which allow the Friend of the Court access to locator information on the LEIN system for purposes of enforcing child support, but impose criminal penalties on disclosure of LEIN information "in a manner not authorized by law or rule."

2. Police Reports

Police who investigate or intervene in domestic violence incidents are required by statute to prepare a report describing the incident, which is to be retained in the law enforcement agency's files and filed with the prosecuting attorney within 48 hours after in incident is reported. MCL 764.15c(3); MSA 28.874(3)(3). These reports are prepared for incidents involving allegations of:

- A violation of a domestic relationship PPO issued under MCL 600.2950; MSA 27A.2950;* and/or,
- A crime committed by an individual against his or her spouse or former spouse, a person with whom the individual has a child in common, or a person who resides or has resided in the same household with the individual. MCL 764.15c(4); MSA 28.874(3)(4).

*See Section 7.2 on domestic relationship PPOs.

Under MCL 764.15c(2); MSA 28.874(3)(2), the police domestic violence incident report must contain at least all of the following information:

- The address, date, and time of the incident investigated.

- The victim's name, address, home and work telephone numbers, race, sex, and date of birth.
- The suspect's name, address, home and work telephone numbers, race, sex, date of birth, and descriptive information.
- The existence of an injunction or restraining order against the suspect.
- The name, address, home and work telephone numbers, race, sex, and date of birth of any witness, and the relationship of the witness to the suspect or victim. The witness may be a child of the victim or suspect.
- The name of the person who called the law enforcement agency.
- The relationship of the victim and suspect.
- Whether alcohol or controlled substance use was involved in the incident, and by whom it was used.
- A brief narrative describing the incident and the circumstances leading to it.
- Whether and how many times the suspect physically assaulted the victim and a description of any weapon or object used.
- A description of all injuries sustained by the victim and an explanation of how the injuries were sustained.
- If the victim sought medical attention, information about where and how the victim was transported, whether the victim was admitted to a hospital or clinic for treatment, and the name and telephone number of the attending physician.
- A description of any property damage reported by the victim or evident at the scene.
- A description of any previous domestic disputes or incidents involving domestic violence between the victim and suspect.
- The date and time of the report and the name, badge number, and signature of the reporting officer.

Police reports prepared under MCL 764.15c; MSA 28.874(3) can be obtained by Friend of the Court personnel if they are attached to a complaint filed against the defendant by the prosecutor's office. The criminal court will black out information concerning the victim, however.

3. Information About Deferred Proceedings

*To be considered a "first-time offender" under the deferral statutes, the defendant may not have been convicted before of the same offense or of another offense specifically listed in the deferral statute. For more discussion of deferred proceedings, see Section 8.9.

First-time offenders found guilty of, or pleading guilty to, certain crimes may be eligible for deferred proceedings.* In cases involving domestic violence, the following deferred proceedings statutes are most likely to be at issue:

- MCL 769.4a; MSA 28.1076(1) provides for a one-time deferral of sentencing in cases involving assault on a domestic partner in violation of MCL 750.81; MSA 28.276 or a substantially corresponding local ordinance, or MCL 750.81a; MSA 28.276.

- MCL 750.350a(4); MSA 28.582(1)(4) provides for a one-time deferral of sentencing in cases involving parental kidnapping in violation of MCL 750.349; MSA 28.581 or MCL 750.350; MSA 28.582.

The foregoing deferred sentencing statutes allow a court to place a first-time offender on probation after a finding of guilt, without entering judgment. If the offender subsequently violates a condition of probation, the court may enter an adjudication of guilt and impose sentence. If the defendant fulfills the conditions of probation, however, the court must discharge him or her and dismiss the proceedings without an adjudication of guilt. An individual may be discharged and dismissed only one time under these deferral statutes. The Department of State Police keeps non-public records of proceedings under the statutes to ensure that repeat offenders do not benefit from multiple deferrals.

Court records concerning deferred proceedings remain public and should be accessible to Friend of the Court personnel until such time as the defendant is discharged for having fulfilled the conditions of probation imposed by the court. (Note, however, that local practices may vary as to when records in deferred proceedings become nonpublic.) After the defendant has successfully fulfilled the conditions of probation and been discharged, the record of the deferred proceeding is no longer accessible.

4. Orders for Parole

The Parole Board within the Department of Corrections is responsible for the release of prisoners on parole. Parole orders are a matter of public record. See MCL 791.234(6)(d); MSA 28.2304(6)(d) (Except for specified medical records, parole files of certain prisoners under sentence for life are public record) and *Oakland County Prosecutor v Department of Corrections*, 222 Mich App 654, 657, 659 (1997) (Public records are subject to disclosure under the Freedom of Information Act unless material is specifically exempted from disclosure under MCL 15.243; MSA 4.1801(13); no privilege prevented disclosure to prosecutor of a prisoner's psychological or psychiatric treatment for purposes of deciding whether to appeal parole decisions.) Notice of orders for parole must be given to the following persons:

- The sheriff or other police officer of the municipality or county where the prisoner was convicted, MCL 791.236(1); MSA 28.2306(1);

- The sheriff or other police officer of the municipality or county to which the prisoner has been sent, MCL 791.236(1); MSA 28.2306(1); and,
- The victim of the crime, MCL 780.771; MSA 28.1287(771).

Parole orders "shall contain the conditions of the parole and shall specifically provide proper means of supervision of the paroled prisoner...." MCL 791.236(4); MSA 28.2306(4). The conditions of parole may include a condition intended to protect one or more named persons, which must be entered into the corrections management information system, which is accessible through the LEIN system. MCL 791.236(14); MSA 28.2306(14). Law enforcement officers may arrest an individual without a warrant if they have reasonable cause to believe that the individual has violated a condition of parole. MCL 764.15(1)(g); MSA 28.874(1)(g).

Orders for parole have the same importance in domestic relations proceedings as do pretrial conditional release orders and orders for probation. For the reasons noted in Section 2.10(A), courts in domestic relations proceedings must be aware of the conditions imposed in parole orders to avoid taking inconsistent actions that may cause confusion for the parties and danger for the victim of domestic violence.

5. Diversion Proceedings

In some Michigan jurisdictions, "diversion" is an alternative to court proceedings that is initiated and administered by the county prosecutor or city attorney.* Diversion is similar to deferred proceedings described above in that it involves a probationary period, which, if successfully completed, allows a defendant to avoid a criminal conviction. Defendants who participate in diversion programs are subject to probationary terms and conditions imposed and supervised by the prosecutor's or city attorney's office. Defendants who successfully complete the probationary term are not prosecuted in court and the case is dismissed without a conviction being entered on the public record. If a defendant fails to fulfill the conditions of probation, however, the case is referred to the court system for prosecution.

*This discussion applies only to adults. On diversion in cases involving juveniles, see Miller, Juvenile Justice Benchbook, Section 6.3 (MJI, 1998).

Diversion programs are not mandatory in Michigan and there are no statutory requirements. Each county prosecutor and city attorney has the discretion to create such a program. Not every Michigan prosecutor or city attorney office has a diversion program; most are found in larger urban areas.

Diversion is typically available only for first-time offenders who commit non-assaultive crimes (e.g., property and theft crimes).* A defendant's participation in a diversion program is voluntary, and no defendant may participate more than once. The terms and conditions of probation may include community service, restitution, fines, and counseling. Participation in a diversion program does not prevent a defendant from using one of the deferral statutes described in Section 2.10(B)(3).

*Even a non-assaultive crime can be a "domestic violence crime" if committed to control an intimate partner. See Section 8.1.

Diversion records are held at the local level and are available under the Freedom of Information Act from prosecutors' and city attorneys' offices. Diversion records may include warrant requests, police reports, witness lists, defendants' criminal conviction histories, interview forms, probation forms, discharge forms, notes and letters. The Michigan State Police are not required to hold diversion records.

2.11 Information in Personal Protection Orders

It is critical to safe, effective case management that domestic relations court personnel know about personal protection orders governing the parties to a domestic relations action:

- **F** Conflicting personal protection and domestic relations orders cannot be effectively enforced by police. This lack of enforcement provides abusers with opportunities for further violence, and puts victims and their children in danger.

- **F** Coordination of PPO and domestic relations actions filed within a single court is required by MCR 3.703(C)(1)(a), which provides that "[i]f the [PPO] petition is filed in the same court as a pending action or where an order or judgment has already been entered by that court affecting the parties, it shall be assigned to the same judge."

- **F** Communication between the courts in PPO and domestic relations actions avoids situations in which one court orders the parties to take actions that are inconsistent with those ordered by the other court. For example, if Friend of the Court personnel know that a PPO regulates contact between the parties to a domestic relations action, they can tailor their recommendations to the court accordingly.

- **F** If Friend of the Court personnel have information about the terms of a PPO, they can take steps to promote the safety of the parties as the case progresses. If necessary, the court can limit access to records,* set up individual meetings with the parties, stagger arrival and departure times, or arrange for extra security.

*See Section 2.13(F) on limiting access to children's records in a PPO.

- **F** From an abused party's perspective, the transfer of information about a PPO to the Friend of the Court office streamlines the process, eliminating the need to make multiple detailed explanations about the circumstances of the PPO case.

Effective July 1, 2000, the clerk of the court that issues a PPO is required to immediately send notice of the PPO's issuance to the Friend of the Court in the following circumstance:

> "If the respondent [in a personal protection action] is identified in the pleadings as being a person who may have access to information concerning the petitioner or a child

> of the petitioner or respondent and that information is contained in friend of the court records, [the clerk shall] notify the friend of the court for the county in which the information is located about the existence of the personal protection order." MCL600.2950(15)(f),600.2950a(12)(f); MSA 27A.2950(15)(f), 27A.2950(1)(12)(f).

The foregoing provision only requires the court clerk to notify the Friend of the Court of the PPO's issuance, not of its modification, extension, or rescission. Moreover, the statute does not indicate how the clerk is to discover whether the respondent has access to information in Friend of the Court records, or where these records might be located. In light of these difficulties, the Advisory Committee for this Resource Book advises Friend of the Court personnel to check for changes to the status of a PPO before taking any action in reliance on it. The Committee also suggests that court personnel ask the parties about the existence or status of PPOs each time the parties encounter the court system.

In some Michigan counties, a designated person acts as a "PPO Coordinator" or "PPO Specialist," assisting petitioners as they go through the court's PPO petition process. Effective July 1, 2000, the family division of circuit court is authorized by statute to provide domestic violence victim advocates to assist victims of domestic violence in obtaining personal protection orders. MCL 600.2950c; MSA 27A.2950(3). Advocates may not represent or advocate for domestic violence victims in court, but may perform a list of duties enumerated in the statute.* See also MCL 600.916; MSA 27A.916 (immunity provision).

*See Section 3.2(B) for more information on services that advocates may provide.

The Advisory Committee for this Resource Book notes that if a court's PPO coordinator (or specialist) is an employee of a domestic violence service agency rather than a court employee, the confidentiality provisions of MCL 600.2157a(2); MSA 27A.2157(1)(2) should be consulted before that person undertakes to transmit information to the Friend of the Court office. This statute applies to confidential communications between victims and sexual assault or domestic violence counselors, and requires the victim's prior written consent before such communications may be admissible as evidence in any civil or criminal court proceeding, as follows:

> "[A] confidential communication, or any report, working paper, or statement contained in a report or working paper, given or made in connection with a consultation between a victim and a sexual assault or domestic violence counselor, shall not be admissible as evidence in any civil or criminal proceeding without the prior written consent of the victim."

The scope of this victim/counselor privilege is determined by MCL 600.2157a(1); MSA 27A.2157(1)(1), which provides the following definitions:

> "(a) 'Confidential communication' means information transmitted between a victim and a sexual assault or domestic violence counselor, or between a victim or sexual assault or domestic violence counselor and any other person to whom disclosure is reasonably necessary to further the interests of the victim, in connection with the rendering of advice, counseling, or other assistance by the sexual assault or domestic violence counselor to the victim.
>
> * * *
>
> "(c) 'Sexual assault' means assault with intent to commit criminal sexual conduct.
>
> "(d) 'Sexual assault or domestic violence counselor' means a person who is employed at or who volunteers service at a sexual assault or domestic violence crisis center, and who in that capacity provides advice, counseling, or other assistance to victims of sexual assault or domestic violence and their families.
>
> "(e) 'Sexual assault or domestic violence crisis center' means an office, institution, agency, or center which offers assistance to victims of sexual assault or domestic violence and their families through crisis intervention and counseling.
>
> "(f) 'Victim' means a person who was or who alleges to have been the subject of a sexual assault or of domestic violence."

MCL 600.2157a(1)(b); MSA 27A.2157(1)(1)(b) defines "domestic violence" with reference to MCL 400.1501(d)–(e); MSA 16.611(1)(d)–(e), which is contained in the act creating the Michigan Domestic Violence Prevention and Treatment Board, and provides the following definitions:

> "(d) 'Domestic violence' means the occurrence of any of the following acts by a person that is not an act of self-defense:
>
> (i) Causing or attempting to cause physical or mental harm to a family or household member.
>
> (ii) Placing a family or household member in fear of physical or mental harm.
>
> (iii) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

> (iv) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.
>
> "(e) 'Family or household member' includes any of the following:
>
> (i) A spouse or former spouse.
>
> (ii) An individual with whom the person resides or has resided.
>
> (iii) An individual with whom the person has or has had a dating relationship.*
>
> (iv) An individual with whom the person is or has engaged in a sexual relationship.
>
> (v) An individual to whom the person is related or was formerly related by marriage.
>
> (vi) An individual with whom the person has a child in common.
>
> (vii) The minor child of an individual described in subparagraphs (i) to (vi)."

* "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. It does not include a casual relationship or an ordinary fraternization between persons in a business or social context. MCL 400.1501(b); MSA 16.611(1)(b).

The privilege created in MCL 600.2157a; MSA 27A.2157(1) does not apply to information that must be disclosed under the Child Protection Law, MCL 722.623, 722.631; MSA 25.248(3), 25.248(11).

The privilege created in MCL 600.2157a; MSA 27A.2157(1) renders victim/counselor communications inadmissible as evidence absent a victim's written consent. The Michigan Attorney General has opined that the statute does *not* prohibit other non-evidentiary uses of such communications. Accordingly, the Attorney General has concluded that the statute does not prohibit a domestic violence counselor from disclosing a victim's whereabouts to law enforcement authorities. However, a domestic violence shelter or other crisis center is free to adopt whatever policies it wishes regarding the voluntary disclosure of such information. OAG, 1997, No 6953 (September 16, 1997).

> **Note:** If a sexual assault or domestic violence counselor is also licensed as a social worker or psychologist, other privileges may apply in addition to the privilege created in MCL 600.2157a; MSA 27A.2157(1). See MCL 339.1610; MSA 18.425(1610) regarding communications between a social worker and a client. A more complete discussion of privileged communications with medical or mental health service providers appears at Lovik, Domestic Violence: A Guide to Civil and Criminal Proceedings, Section 5.8 (MJI, 1998).

2.12 Working with Community Service Agencies

A. Domestic Violence Service Agencies

*See Chapter 3 for more information about the work of domestic violence service agencies.

Some Michigan courts have experimented with information-sharing arrangements with domestic violence service agencies in their communities.* Such arrangements can be mutually beneficial, easing the workload of both the court and the agency. Information gathered from a service agency can be extremely helpful to Friend of the Court personnel who are investigating or evaluating a case involving domestic violence, or who are considering mediation of a case. Obtaining information from a domestic violence expert early in the case assists the court in managing the case to promote safety, and provides an adequate factual basis for the court's decision-making. In some counties, the service agency prepares a narrative of the case, which is shared with the Friend of the Court office with the client's written permission. This narrative includes children's statements, if the parent permits.

> **Note:** The Advisory Committee for this Resource Book suggests that a client's written release of information to the Friend of the Court office clearly disclose to the client that the information released will not be confidential, and that it may be shared with those persons who have access to the Friend of the Court file, including the other party to the domestic relations action and his or her attorney.

A cooperative working relationship with a domestic violence service agency can also provide the Friend of the Court office with a valuable referral resource with expertise beyond that normally found among court personnel. Furthermore, service agency employees who are familiar with Friend of the Court policies and procedures can often help their clients to better understand court proceedings and to access pro bono legal services where these are needed.

From the service agency's perspective, sharing information with the Friend of the Court office may improve its ability to serve as an advocate for its clients. Information-sharing may also thwart a party's efforts to manipulate the system, which is beneficial for both courts and service agencies.

In considering information-sharing arrangements, both the court and the service agency must be cognizant of the confidentiality provisions that apply in both professional settings.

F Under MCR 3.218, discussed at Section 2.13(A), certain information in Friend of the Court records is confidential. Disclosure of non-confidential information in Friend of Court records is required with respect to parties, third-party custodians, guardians, guardians ad litem or counsel for minors, and attorneys of record. Protective Services personnel, Office of Child Support personnel, prosecutors, and state and federal auditors are also given access to Friend of the

Court records for limited purposes described in the Court Rule. There is no provision in the court rules for disclosure of case information to domestic violence service agencies. Accordingly, written permission to do so should be obtained from all parties affected by the disclosure.

F Under MCL 600.2157a; MSA 27A.2157(1), discussed at Section 2.11 above, victims' communications with sexual assault or domestic violence counselors are not admissible as evidence in any civil or criminal proceedings without the prior written consent of the victim. Thus, a domestic violence service agency should not share information with the Friend of the Court office until the client has signed an authorization to release information. Authorization forms may be provided by the Friend of the Court or the service agency. These forms typically describe the type of information to be released, the purpose of the release, and the duration of the authorization; they may also specify that the authorization is voluntary and revocable in writing at any time.

Another prerequisite for successful information-sharing between a court and a domestic violence service agency is mutual trust and understanding of each institution's purpose, policies, and constraints. Achieving such trust and understanding may well be dependent upon the willingness of personnel in each institution to meet with one another and to listen carefully and respectfully to one another's concerns. Counties where information-sharing arrangements have succeeded have found that periodic joint cross-training sessions with court and service agency personnel are necessary to maintain a workable relationship. At these sessions, members of each profession learn about the other, and have opportunities to problem-solve about areas of disagreement, to the extent this is possible.

B. Batterer Intervention Service Providers

Batterer intervention service programs are generally designed to hold domestic violence perpetrators accountable for their actions and to provide them with an opportunity to change their behavior.* In criminal misdemeanor cases, courts often order domestic violence defendants to participate in a batterer intervention service program as a condition of probation. In civil domestic relations proceedings, it may also be useful to refer an abusive party to participate in a batterer intervention program, e.g., as a condition to an order for parenting time with a child.

*Batterer intervention services are also discussed in Sections 3.3–3.4.

Under Michigan's batterer intervention standards, information about program participants is protected as confidential; however, participants must authorize release of information to the victim and the referring court. If a court refers a party to a batterer intervention service program, the party's authorization to release information to the court should be obtained. See Section 3.4(C) for more information on confidentiality requirements in this context.

C. Participating in a Coordinated Community Response Effort

Domestic violence is a phenomenon of such complexity that no single social institution acting in isolation can provide an adequate response. Accordingly, many communities have organized coordinated response efforts or coordinating councils to combat domestic violence. These groups include members from community institutions that provide services to families where domestic violence is present; law enforcement agencies, prosecutors' offices, health care providers, clergy, schools, and local courts are typically represented in a community's coordinated response effort.

The Friend of the Court's participation in a community's coordinated response effort can enhance the court's response to domestic violence in several ways:

- It improves the court's knowledge of community resources, enabling it to make well-informed referrals to other services when this is necessary.
- It provides the court an opportunity to explain its procedures to service providers from other disciplines, who can in turn provide accurate information to members of the public who use the court system.
- It provides court personnel the opportunity to develop good working relationships with other service providers, which may facilitate more open inter-agency communication.
- It increases the court's knowledge of how other institutions respond to domestic violence, which allows the court to better coordinate its efforts with those of other agencies.

2.13 Confidentiality of Records Identifying the Whereabouts of Abused Individuals

As noted in Section 2.1, courts can promote safety in cases involving domestic violence by developing consistent procedures for safeguarding confidential information. Because many abused individuals seek to keep abusers from discovering their whereabouts, identifying information is of particular concern in cases involving domestic violence. Identifying information includes:

- A child's or party's residence address.
- A party's workplace or job training address.
- A party's occupation.
- A child's or party's school or place of education.

- **F** Telephone numbers for the above entities.
- **F** Records of name changes.

This section explores the Michigan rules governing confidentiality of identifying information in court and other records.

A. Confidentiality in Friend of the Court Records Generally

MCR 8.119(E)(1) provides that "[u]nless access to a file, a document, or information contained in a file or document is restricted by statute, court rule, or an order entered pursuant to [MCR 8.119(F)], any person may inspect pleadings and other papers in the clerk's office, and may obtain copies as provided in [MCR 8.119(E)(2)–(3)]."*

*MCR 8.119 applies to all actions in every trial court, with exceptions not relevant here. MCR 8.119(A).

MCR 8.119(F) sets forth the following procedures to obtain an order restricting access to court records:

> "(F) Sealed Records.
>
> "(1) Except as otherwise provided by statute or court rule, a court may not enter an order that seals courts [sic] records, in whole or in part, in any action or proceeding, unless
>
> > (a) a party has filed a written motion that identifies the specific interest to be protected,
> >
> > (b) the court has made a finding of good cause, in writing or on the record, which specifies the grounds for the order, and
> >
> > (c) there is no less restrictive means to adequately and effectively protect the specific interest asserted.
>
> "(2) In determining whether good cause has been shown, the court must consider the interest of the public as well as of the parties.
>
> "(3) The court must provide any interested person the opportunity to be heard concerning the sealing of the records.
>
> "(4) For purposes of this rule, 'court records' includes all documents and records of any nature that are filed with the clerk in connection with the action. Nothing in this rule is intended to limit the court's authority to issue protective orders pursuant to MCR 2.302(C) [governing protective orders against discovery].

> "(5) A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record.
>
> "(6) Any person may file a motion to set aside an order that disposes of a motion to seal the record, or an objection to entry of a proposed order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies a motion to set aside the order or enters the order after objection is filed, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action. See MCR 8.116(D) [regarding limitation on public access to court proceedings or records of the proceedings].
>
> "(7) Whenever the court grants a motion to seal a court record, in whole or in part, the court must forward a copy of the order to the Clerk of the Supreme Court and to the State Court Administrative Office."

See also 2 *Manual for Friend of the Court,* Section 9–21 (State Court Administrative Office, rev'd 2/2000) for more information about procedures for public access to records.

In domestic relations cases, MCR 3.218 specifically governs access to Friend of the Court records. It provides that "[a] party, third-party custodian, guardian, guardian ad litem or counsel for a minor, and an attorney of record must be given access to friend of the court records related to the case, other than confidential information." MCR 3.218(B).*

*Additionally, named government entities may access records related to their functions. See MCR 3.218(C)–(E).

"Confidential information" is defined in MCR 3.218(A)(3) to mean:

> "(a) staff notes from investigations, mediation sessions, and settlement conferences;
>
> "(b) [Family Independence Agency] protective service reports;
>
> "(c) formal mediation records;
>
> "(d) communications from minors;
>
> "(e) friend of the court grievances filed by the opposing party and the responses;
>
> "(f) a party's address or any other information if release is prohibited by a court order; and

> "(g) all information classified as confidential by the laws and regulations of title IV, part D of the Social Security Act, 42 USC 651 et seq"*

*Amendments to MCR 3.218 effective April 1, 2001 will add to this list information that is privileged or provided by a governmental agency subject to a written condition of confidentiality. See Section 2.14 on the Social Security Act, and Section 6.2 on mediation.

Under MCR 3.218(A)(3)(f), any information in Friend of the Court records can be protected from disclosure by a court order. However, this rule does not specify the procedures for obtaining such an order.

It is not clear whether a court order issued pursuant to MCR 3.218(A)(3)(f) must be issued in accordance with the procedures set forth in MCR 8.119(F). MCR 8.119(E)(1) contemplates various sources of authority for restricting access to documents "by statute, court rule, or an order entered pursuant to [MCR 8.119(F)]." Moreover, the procedures for sealing records in MCR 8.119(F)(1) apply "[e]xcept as otherwise provided by statute or court rule." In cases where a court rule — such as MCR 3.218(A)(3)(f) — authorizes courts to order restrictions on access without providing procedures for issuing such orders, the procedures in MCR 8.119(F) seem to apply.

> **Note:** The requirement in MCR 8.119(F)(3) that the court provide "any interested person the opportunity to be heard concerning the sealing of the records" may be problematic in cases involving domestic violence. Abusers may use this "opportunity" as a tool for harassing the person seeking confidentiality. Furthermore, the motion process itself may be dangerous for an abused individual. Advance notice of a hearing on a motion may itself alert the abuser to the abused individual's whereabouts, particularly, if the abused individual must appear in court for a hearing, or if the abused individual's address must appear on the motion papers. (Under MCR 2.113(C), the caption of a motion must contain the name, address, and telephone number of the pleading attorney, or, if the party has no attorney, the party's name, address, and telephone number.)* It may be helpful to permit parties to file ex parte motions to seal court records, affording an "opportunity to be heard" within a reasonable time after entry of the order under MCR 8.119(F)(6).

*See Section 2.13(C) for more information about motion papers.

Other authorities in addition to MCR 3.218 address the confidentiality of specific types of information of relevance in domestic relations cases. The rest of this section discusses these authorities, which govern:

- Complaints and verified statements.
- Responsive pleadings, motions, and court orders or judgments.
- Address information.
- Documents that support recommendations.
- Children's records.

- Records in interstate cases.
- Records of name changes.

For information about federal confidentiality requirements under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, see Section 2.14.

B. Complaint and Verified Statement

Disclosure and protection of information in the complaint and verified statement in a domestic relations case is governed by MCR 3.206.

1. Information That Must Be Disclosed

MCR 3.206(A)(1) provides that a domestic relations complaint must state the complete names of all parties, the complete names and dates of birth of any minors involved in the action, and the residence information required by statute. Under this rule, the complaint does not have to contain a specific address, so that a party's state or county of residence may be sufficient. See MCL 552.9; MSA 25.89.

The court rule requires more detailed information if the action involves a minor, or if child or spousal support is requested, however. MCR 3.206(B)(1) requires the party seeking relief to attach a verified statement to the copies of papers served on the other party and provided to the Friend of the Court. This verified statement must include:

> "(a) the last known telephone number, post office address, residence address, and business address of each party;
>
> "(b) the social security number and occupation of each party;
>
> "(c) the name and address of each party's employer;
>
> "(d) the estimated weekly gross income of each party;
>
> "(e) the driver's license number and physical description of each party...;
>
> "(f) any other names by which the parties are or have been known;
>
> "(g) the name, age, birth date, social security number, and residence address of each minor involved in the action, as well as of any other minor child of either party;

> "(h) the name and address of any person, other than the parties, who may have custody of a minor during the pendency of the action;
>
> "(i) the kind of public assistance, if any, that has been applied for or is being received by either party or on behalf of a minor, and the AFDC and recipient identification numbers...;
>
> "(j) the health care coverage, if any, that is available for each minor child; the name of the policyholder; the name of the insurance company, health care organization, or health maintenance organization; and the policy, certificate, or contract number."

In cases where the custody of a minor is to be determined, additional information required by MCL 600.659; MSA 27A.659 (the Uniform Child Custody Jurisdiction Act) must be provided, either in the complaint or verified statement. MCR 3.206(A)(3). MCL 600.659; MSA 27A.659 provides, in part:

> "(1) Each party in a custody proceeding in the party's first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period."

2. Confidentiality of Information in the Verified Statement

Confidentiality of the information in the verified statement is governed by MCR 3.206(B)(2), which states:

> "The information in the verified statement is confidential, and is not to be released other than to the court, the parties, or the attorneys for the parties, except on court order. For good cause, the addresses of a party and minors may be omitted from the copy of the statement that is served on the other party."

Under the foregoing subrule, a party seeking to protect his or her identifying information from the other party must show "good cause" to do so. This "good cause" exception applies only to addresses of a party and minors. It does not protect information about a party's occupation, employment address, or insurance coverage, from which an abuser could also gain access to a victim. However, some relief regarding these items may be available under MCR 3.206(B)(3), which provides:

> "If any of the information required to be in the verified statement is omitted, the party seeking relief must explain

the omission in a sworn affidavit, to be filed with the court."

While MCR 3.206(B)(3) permits a party to explain omissions in the verified statement, it does not instruct the court as to how such omissions should be handled. See Section 2.13(A) for discussion of procedures for sealed court records under MCR 8.119(F).

Note: It may be helpful to ask each party on intake of a case whether there are safety concerns with disclosing identifying information to the other party. Where domestic violence is present, some courts will allow a party living in a shelter to give a post office box as an address; otherwise, a court order is needed to protect an address.

C. Confidentiality of Information Disclosed in Responsive Pleadings, Motions, and Court Judgments or Orders

The Michigan Court Rules require disclosure of parties' addresses on responsive pleadings, motion papers, and court judgments and orders awarding child or spousal support. There are no express exceptions to these requirements for cases in which disclosure of a party's address presents a danger to that party.

*See MCR 3.201(C) on the applicability of this rule in domestic relations proceedings.

- The contents of **responsive pleadings and motion papers** are governed by MCR 2.113(C).* Under this rule, the caption of a pleading or motion must contain the name, address, and telephone number of the pleading attorney, or, if the party has no attorney, the party's name, address, and telephone number.

- MCR 3.211(D)(2) states that **a judgment or order awarding child or spousal support** must "set forth the parties' residence addresses, and require parties over whom the court has obtained jurisdiction to inform the friend of the court of any subsequent change of address or employment."

Although the foregoing authorities contain no express provisions for requesting a protective order prohibiting disclosure to the other party, the Advisory Committee for this Resource Book suggests that a protective order may be issued based on MCR 8.119(F), described above at Section 2.13(A).

D. Address Information

The parties to domestic relations actions must provide the Friend of the Court office with information about changes of address during the time such actions are pending, and after the court has entered judgments or orders in them:

- MCR 3.211(C)(2) provides that a judgment or order awarding custody of a minor must require the person awarded custody to promptly notify

the Friend of the Court in writing when the minor is moved to another address.

F Where a judgment or order provides for support for a party or children, various statutes require the parties to keep the Friend of the Court office apprised of their addresses, and of the names and addresses of their current sources of income. See, e.g., MCL 552.15–552.17; MSA 25.95–25.97 (orders in proceedings for annulment, divorce, or separate maintenance), MCL 552.452, 552.455; MSA 25.222(2), 25.222(5) (orders issued under the Family Support Act), MCL 552.603(6)(b); MSA 25.164(3)(6)(b) (orders and judgments subject to the Support and Parenting Time Enforcement Act).

The foregoing authorities make no express provision for requesting a protective order prohibiting disclosure to the other party. See Section 2.13(A) for discussion of procedures for sealed court records under MCR 8.119(F).

Where domestic violence is present, some courts address the need for confidentiality by allowing a party living in a shelter to give a post office box as an address.

Note: MCR 3.705(B)(5) governs the confidentiality of a petitioner's address in a personal protection action. This rule provides:

> "...[T]he petitioner may omit his or her residence address from the documents filed with the court, but must provide the court with a mailing address."

The omission of a petitioner's residence address on a petition and order in a personal protection action will alert Friend of the Court personnel to potential danger. If Friend of the Court personnel are aware that a party's residence address has been omitted from the documents in a personal protection action, they might ask the party if it is safe to disclose the address on documents generated in the domestic relations action. Questions about PPOs should ask whether the PPO specifically protects identifying information; if so, Friend of the Court personnel must abide by the terms of the PPO. See Chapter 7 for more information about PPOs.

E. Documents That Support Recommendations

MCL 552.507(4); MSA 25.176(7)(4) provides for access to information gathered by Friend of the Court employees, as follows:

*These sections permit referees and Friend of the Court personnel to make reports and recommendations on custody, parenting time, or child support.

> "A copy of each report, recommendation, transcript, and any supporting documents *or a summary of supporting documents* prepared or used by the friend of the court or an employee of the office shall be made available to the attorney for each party and to each of the parties before the court takes any action on a recommendation made under [sections 5 or 7 of the Friend of the Court Act, MCL 552.505, 552.507; MSA 25.176(5), (7)]."* [Emphasis added.]

Although broad, the foregoing disclosure requirements permit Friend of the Court personnel to maintain the confidentiality of identifying information in appropriate cases. Under the cited statute, a *summary* of a supporting document may be provided to a party in a case rather than an original document. If Friend of the Court staff know that release of identifying information in a document will put a party in danger, they can summarize any documents that support recommendations to the court, omitting the identifying information.

F. Access to Children's Records

MCL 722.30; MSA 25.312(10) states that non-custodial parents must have access to information in children's records in the absence of a protective order issued by a court:

> "Notwithstanding any other provision of law, a parent shall not be denied access to records or information concerning his or her child because the parent is not the child's custodial parent, unless the parent is prohibited from having access to the records or information by a protective order. As used in this section 'records or information' includes, but is not limited to, medical, dental, and school records, day care provider's records, and notification of meetings regarding the child's education."

*See Section 7.2 for a description of a domestic relationship PPO.

A domestic relationship PPO can prohibit a person from obtaining access to identifying information in children's records.* MCL 600.2950(1)(h); MSA 27A.2950(1)(h) provides that the court may restrain a respondent from:

> "Having access to information in records concerning a minor child of both petitioner and respondent that will inform respondent about the address or telephone number of petitioner and petitioner's minor child or about petitioner's employment address."

MCL 380.1137a; MSA 15.41137(1) prohibits a school from releasing the foregoing information protected by a PPO, as follows:

> "If a school district, local act school district, public school academy, intermediate school district, or nonpublic school is the holder of records pertaining to a minor pupil, if a parent of the minor pupil is prohibited by a personal protection order...from having access to information in records concerning the minor pupil that will inform the parent about the minor's or other parent's address or telephone number or the other parent's employment address, and if the school district, local act school district, public school academy, intermediate school district, or nonpublic school has received a copy of the personal protection order, the school district, local act school district, public school academy, intermediate school district, or nonpublic school shall not release that information to the parent who is subject to the personal protection order."

Restrictions on a parent's access to children's records in a PPO can alert Friend of the Court personnel to potential danger. When questioned about PPOs, parties to domestic relations actions should be asked whether the PPO protects their children's identifying information; if so, Friend of the Court personnel must abide by the terms of the PPO.

See Section 2.13(A) for discussion of restricted access to information in court records in cases where a PPO has not been issued and a party desires to limit a noncustodial parent's access to information regarding a child.

G. Confidentiality Requirements for Interstate Actions

Upon separation from an abuser, relocation to another state may allow the abused party to find family support or economic opportunity in a safe location. Indeed, relocation to another state may be necessary to escape continued violence or harassment. In cases where the abused party has relocated to another state, the courts of that state may be called upon to enforce domestic relations orders entered in another state.

The Uniform Interstate Family Support Act ("UIFSA"), MCL 552.1101 et seq; MSA 25.223(101) et seq, governs interstate proceedings to determine parentage or to enforce, establish, or modify support.* MCL 552.1320; MSA 25.223(320) contains the following confidentiality provision that is broader than the provisions governing enforcement of support orders entered in Michigan:

*For a full list of proceedings covered by this Act, see MCL 552.1301; MSA 25.223(301).

> "Upon a finding, which may be made ex parte, that a party's or a child's health, safety, or liberty would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the party's or child's address or other

> identifying information not be disclosed in a pleading or other document filed in a proceeding under this act."

The Uniform Child Custody Jurisdiction Act ("UCCJA"), MCL 600.651 et seq; MSA 27A.651 et seq, is designed to resolve jurisdictional conflicts in interstate child custody disputes. MCL 600.659; MSA 27A.659 contains the following disclosure requirement:

> "(1) Each party in a custody proceeding in the party's first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period."

Unlike the UIFSA, the UCCJA contains no exception to disclosure for cases in which a party might be endangered by release of information to the other party. If the party's first pleading is a complaint governed by MCR 3.206, the privacy provisions of that court rule would apply. See Section 2.13(B). If the party's first pleading is a responsive pleading, however, no Michigan court rules expressly address exceptions to disclosure. See Section 2.13(A) for discussion of procedures for sealed court records under MCR 8.119(F).

H. Name Changes

In a proceeding for a name change under MCL 711.1; MSA 27.3178(561), the court may order for "good cause" that no publication of the proceeding take place and that the proceeding be confidential. "Good cause" includes evidence that publication or availability of a record could place the person seeking a name change or another person in physical danger, such as evidence that these persons have been the victim of stalking or an assaultive crime. MCL 711.3(1); MSA 27.3178(563)(1).

It is a misdemeanor for a court officer, employee, or agent to divulge, use, or publish, beyond the scope of his or her duties with the court, information from a record made confidential under MCL 711.3(1); MSA 27.3178(563)(1). Disclosures under a court order are permissible, however. MCL 711.3(3); MSA 27.3178(563)(3).

2.14 Federal Information-Sharing Requirements

In addition to the Michigan authorities described in Section 2.13, certain federal statutes contain confidentiality provisions that are of interest in domestic relations cases involving domestic violence. Federal restrictions on access to information in cases involving domestic violence appear in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

("PRWORA"). This legislation expanded the use of the Federal Parent Locator Service ("FPLS") for the following purposes:

- Establishing parentage.
- Establishing, setting the amount of, modifying, or enforcing child support obligations.
- Enforcing any federal or state law regarding the unlawful taking or restraint of a child.
- Making or enforcing a child custody or visitation determination.

The FPLS is operated by the federal Office of Child Support Enforcement in the U.S. Department of Health and Human Services. The FPLS includes a National Directory of New Hires and a Federal Case Registry of Child Support Orders. These federal databases are linked to state Directories of New Hires, and State Case Registries of Child Support Orders.

States must periodically forward data from the state databases to the corresponding databases within the FPLS. The information in the FPLS is accessible to "authorized individuals," who are defined separately in the federal statutes for purposes of custody and support matters. However, states must provide safeguards protecting the privacy rights of persons who may be in hiding from a family violence perpetrator. 42 USC 654(26)(B)–(D) requires states to:

- Prohibit the release of information on the whereabouts of a party or a child to another party against whom a protective order with respect to the former party or child has been entered, 42 USC 654(26)(B);
- Prohibit the release of information on the whereabouts of a party or a child to another person if the State has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or the child, 42 USC 654(26)(C); and
- Notify the Secretary of Health and Human Services that the state has reasonable evidence of domestic violence or child abuse and the disclosure could be harmful to the custodial parent or child of the custodial parent. This notification (called a "Family Violence Indicator") is required in cases where the prohibitions in 42 USC 654(26)(B) and (C) apply. 42 USC 654(26)(D).

42 USC 653(b)(2) prohibits disclosure of FPLS information if the state has notified the Secretary of Health and Human Services that it has reasonable evidence of domestic violence or child abuse and the disclosure could be harmful to the custodial parent or child of the custodial parent. Persons seeking disclosure of information restricted by a Family Violence Indicator must seek a one-time override of the restriction from a court. The court shall determine whether disclosure or information to another person could be harmful to a party or child and, if the court determines that disclosure to

another person could be harmful, the court and its agents shall not make any disclosure. See Section 5.4 for more information about this process.